

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1743 and 1750 of 1992

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPN.

Versus

TOURISM CORPORATION OF GUJARAT

Appearance:

MR MG NAGARGAR for MR SN SHELAT for Appellant
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 05/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals filed by the Ahmedabad Municipal Corporation under section 411 of the Bombay

Provincial Municipal Corporation Act, 1949, challenging the judgement and order passed by the lower court in appeal under section 406 of the said Act.

2. The main point which arises in the present appeals and urged before us is a pure question of law which is popularly known as "tax on tax".

3. The issue which arises for consideration is as to whether the municipal tax payable by the tenant to the landlord under the contract of letting, when paid directly by the tenant to the Corporation, can be included in "Annual Letting Value" as defined in section 2(-A) of the Act. This question was directly in issue and was decided by a Full Bench of this Court in the case of Municipal Corporation of the City of Ahmedabad Vs. Canara Bank, Ahmedabad, reported at 1993(1) GLH page 180.

4. The Full Bench, after an exhaustive analysis of the aforesaid definition of "Annual Letting Value" and the relevant case law on the subject, ultimately came to the conclusion (paragraph 33 of the said decision) that the taxes which are paid directly by the tenant to the Corporation, or paid through the landlord to the Corporation authorities can rightly be treated as components of annual rent, and therefore, can form part of annual letting value as defined by section 2 (1-A) of the Act.

5. The Full Bench, therefore, decided that in a given fact situation where the tenant is bound to pay the municipal taxes to the landlord under the contract of letting, and in order to discharge this obligation pays tax to the Municipal Corporation, thus simultaneously discharging the landlord-owner's obligation to pay tax to the Municipal Corporation, this component and quantum of tax paid directly to the Corporation can be included by the Corporation within "Annual Letting Value" within the meaning of the said section.

6. The aforesaid decision of the Full Bench was confirmed by the Supreme Court in an appeal filed by the tenant which is reported at 1996(7) SCC 298 (Canara Bank Vs. Municipal Corporation of Ahmedabad).

7. It, therefore, follows that when municipal tax is assessed upon the "Annual Letting Value", which includes this component of tax, the demand for such tax is justified in law.

8. It, therefore, follows and we hold accordingly,

that the impugned judgement and order is not justified in law and is consequently quashed and set aside to the aforesaid extent.

9. Learned counsel for the appellant further submitted that if any questions of fact require to be decided in view of the clear position in law now settled and determined by the present judgement, the same can be left open and the matter may be remanded back to the lower court for decision on such factual dispute. The matters are, therefore, remanded to the lower court for the aforesaid purpose. Accordingly we direct that the lower court may decide such factual disputes which may arise in these matters in the light of the aforesaid clear position in law.

10. These appeals are therefore allowed to the aforesaid extent with no order as to costs.

ar